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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Application by Verizon New England)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company)
(d/b/a Verizon Enterprise Solutions),)
and Verizon Global Networks Inc.,)
For Authorization Under Section 271 of)
The Telecommunications Act of 1996)
To Provide In-Region, InterLATA)
Services in Massachusetts)

CC Docket No. 00-176

EVALUATION OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

VOLUME I OF II

Commonwealth of Massachusetts
Department of Telecommunications and Energy

Hearing Officers:
Cathy Carpino
Tina Chin

James Connelly, Chairman
W. Robert Keating, Commissioner
Paul B. Vasington, Commissioner
Eugene J. Sullivan, Jr., Commissioner
Deirdre K. Manning, Commissioner

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Dated: October 16, 2000

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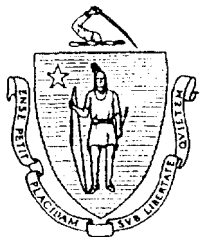
James Connelly, Chairman
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Dated: October 16, 2000



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October 16, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B-204
Washington, D.C. 20554

Re: In the Matter of the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts,
CC Docket No. 00-176

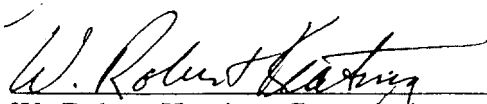
Dear Secretary Salas:

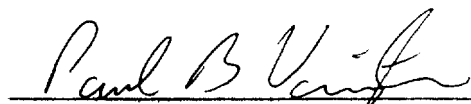
Enclosed is the Massachusetts Department of Telecommunications and Energy's ("MDTE's") Evaluation of Verizon Massachusetts's Compliance with Section 271 of the Telecommunications Act of 1996. Please note that the MDTE is filing a confidential portion of the submission and a redacted version of the entire submission. The MDTE is also providing an electronic version of the redacted version on disk in WordPerfect and PDF formats, in


accordance with discussions with the Common Carrier Bureau.

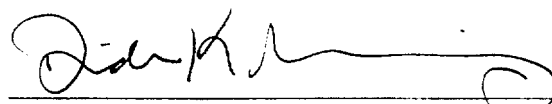
By the Commission,


James Connelly, Chairman


W. Robert Keating, Commissioner


Paul B. Vasington, Commissioner


Eugene J. Sullivan, Jr., Commissioner


Deirdre K. Manning, Commissioner

cc: Susan Pie, Policy and Program Planning Division
Common Carrier Bureau, Room 5-C224

Josh Walls, U.S. Department of Justice
Antitrust Division

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EXECUTIVE SUMMARY

The Massachusetts Department of Telecommunications and Energy ("Department") recommends that the Federal Communications Commission ("FCC") grant Verizon's application to provide long distance services in the Commonwealth of Massachusetts. Verizon filed its application with the FCC on September 22, 2000, for authorization under § 271 of the Telecommunications Act of 1996 ("Act"). The Department has been investigating Verizon's compliance with § 271 of the Act for over 16 months in docket D.T.E. 99-271, in addition to the extensive work the Department has done in implementing the requirements of the Act, ever since its passage on February 8, 1996. The Department's investigation in D.T.E. 99-271 included five days of public hearings across Massachusetts, almost 30 days of technical sessions, over a thousand information and record requests, and thousands of pages of filings and testimony. The Department's § 271 proceeding was open to participation by all interested parties.

In the Department's recommendation to the FCC, we provide a detailed analysis of Verizon's compliance based on what was discovered in the Department's investigation. The Department advises the FCC that Verizon has met its obligations under § 271 of the Act. Specifically, Verizon demonstrates its compliance with the requirements of § 271(c)(1)(A) by being a party to more than 70 binding, Department-approved interconnection agreements with competitive local exchange carriers ("CLECs"). In addition, Verizon shows that it has a legal obligation, under interconnection agreements and Department-approved tariffs, to provide the 14 items required under the checklist of § 271(c)(2)(B), and that Verizon

is meeting its legal obligation to provide those 14 items.

As part of its 16-month investigation, the Department has conducted a review of Verizon's operations support systems ("OSS"). This review included a comprehensive OSS test, conducted by a third-party evaluator, KPMG Consulting, L.L.C. ("KPMG"), acting under the supervision of the Department. KPMG analyzed and verified Verizon's performance in 804 individual test points across five test domains (pre-order, order, and provisioning; maintenance and repair; billing; relationship management and infrastructure; and performance metrics). KPMG's evaluation within each domain was conducted through both reviews of Verizon's policies and procedures and KPMG's simulation of a CLEC conducting business in Massachusetts. The KPMG test, culminating in a 700-page report, demonstrates that Verizon's OSS provide the functions required by § 271.

In addition, in order to ensure that Verizon has adequate financial incentives to continue to meet its obligations after it has been approved to enter the long distance market, the Department has approved a Performance Assurance Plan ("PAP"), under which Verizon is required to meet specified performance standards or face up to over \$147 million per year in financial penalties.

The Department has concluded that the Massachusetts local telephone markets are irreversibly open to competition. The Department further concludes that allowing Massachusetts customers the option of choosing Verizon for long distance service is likely to result in consumer benefits. Thus, with open markets in Massachusetts and the prospect for additional choices in the long distance market, the Department concludes that approval of

Verizon's application is in the public interest. Therefore, the Department recommends that the FCC approve Verizon's application to offer long distance services in the Commonwealth of Massachusetts.

I. INTRODUCTION

The Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") finds that Verizon New England, Inc. d/b/a Verizon Massachusetts¹ ("VZ-MA") has met the requirements of § 271(c) of the Telecommunications Act of 1996 Act ("Act") in Massachusetts, and that the local exchange market in Massachusetts is irreversibly open to competition. With the structural conditions for local exchange competition irreversibly in place in Massachusetts, VZ-MA is not able to use its position in the local exchange market to unfairly advantage its affiliate in the interLATA market, and the addition of VZ-MA as a significant competitor in the interLATA market promises to provide customers with additional benefits from competition in that market. Therefore, giving Massachusetts customers the ability to choose VZ-MA's interLATA long-distance service is unquestionably in the public interest, and we recommend that the Federal Communications Commission ("FCC" or "Commission") grant VZ-MA's application for authorization to originate interLATA services in Massachusetts.

¹ New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("BA-MA") was the name of the incumbent local exchange carrier operating in Massachusetts until federal approval of the merger between Bell Atlantic Corporation and GTE Services Corporation on June 16, 2000. All references to "BA-MA" should be understood as applying to the successor company. Similarly, the Department refers to the entity formerly known as Bell Atlantic-New York (or "BA-NY") as "Verizon-New York" or "VZ-NY."

II. BACKGROUND ON TELECOMMUNICATIONS COMPETITION IN MASSACHUSETTS

The Department has long been committed to competitive markets and incremental cost-based rates in telecommunications.² In response to the divestiture of the Bell Operating Companies (“BOCs”) from AT&T in 1984, the Department opened an investigation to determine whether it should allow intraLATA competition in Massachusetts.³ In its IntraLATA Competition proceeding, the Department investigated whether its policy goals for telecommunications would be best achieved by a monopoly provider of intraLATA service, or by competition in that market.⁴ The Department concluded “that there are benefits inherent in a competitive marketplace that encourage greater levels of economic efficiency and fairness than does a regulated monopoly environment,” and authorized intraLATA competition, starting on December 1, 1986.⁵

With the endorsement of competition as the best way to achieve its policy goals, it became necessary for the Department to confront the problems associated with the traditional policy of pricing retail services without regard to underlying cost levels or structure. The

² In early 1996, the Commission noted that Massachusetts was one of only seven states where competing firms were offering switched local service. See CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, at ¶ 5 n.10 (rel. April 19, 1996).

³ See IntraLATA Competition, D.P.U. 1731 (1985).

⁴ Id. at 25.

⁵ Id. at 26, 44.

Department addressed the pricing issue in IntraLATA Competition, where it determined that “properly defined incremental costs should be used as the primary basis for pricing all services, including local exchange service,” and also found that “to the extent that current rates do not reflect an appropriate allocation of costs, the Department will, consistent with the need to avoid major discontinuities in rate levels, move toward that goal.”⁶

Subsequently, the Department conducted a multi-phase investigation into the costs and rates of New England Telephone and Telegraph Company (“NET”) (now VZ-MA), including approval of a marginal cost study. The Department then began a series of annual, revenue-neutral “rate-rebalancings” to bring NET’s retail rates more in line with the underlying cost structure. Those rate-rebalancings took place from 1989 to 1994. In that process, the Department significantly reduced rates for business customers and toll, local usage, and switched access services, as well as eliminated message units and different rate groups for local unlimited service. The Department also increased rates for some basic residential services, including the fixed rate for a dial-tone line, and for analog private line services.

The Department also has taken several other steps to promote competitive markets between the divestiture of AT&T in 1984 and the passage of the Act, including the following:

- The Department approved the entry of competitive access providers in the late 1980s (see Yankee Microwave, D.P.U. 87-201 (1988); Teleport Communications – Boston, D.P.U. 88-60 (1988); MFS-McCourt, D.P.U. 88-229 (1989)).
- The Department granted pricing flexibility for competitive services offered by the

⁶ Id. at 36-38.

carriers classified as “dominant” (VZ-MA for intraLATA and AT&T for interLATA) (see NET-Centrex, D.P.U. 84-82 (1984); NET-Centrex, D.P.U. 85-275/276/277 (1985); NET-Intellidial, D.P.U. 88-18-A (1988); AT&T-Customer-specific Pricing, D.P.U. 90-24 (1991); AT&T Alternative Regulation, D.P.U. 91-79 (1992)).

- Massachusetts became the second state in the country (after New York) to approve collocation of competitors’ facilities in the incumbent’s central offices (see Collocation, D.P.U. 90-206/91-66 (1991)).
- The Department eliminated the requirement for most competitive carriers to obtain certificates of public convenience and necessity for market entry (see Entry Deregulation, D.P.U. 93-98 (1994)).

In early 1994, the Department opened an investigation “to determine and put in place the structural components necessary to ensure continued development of open markets in Massachusetts, relying on competitive forces wherever possible, in order that the benefits associated with competition will be realized by all telecommunications customers in the Commonwealth.”⁷ That investigation focused on many of the issues that were subsequently addressed in the Act, including: (1) interconnection of networks, including local and interoffice, signaling, and associated databases; (2) provisioning of number resources; (3) telephone number portability; (4) cooperative engineering, operations, and maintenance practices and procedures; (5) billing arrangements; (6) compensation arrangements; (7) directory and directory assistance provisioning; (8) provisioning of access to emergency services; (9) universal service funding; (10) intraLATA toll presubscription; (11) resale of [VZ-MA’s] unlimited services; and (12) unbundling and pricing of [VZ-MA’s] network

⁷ Order Opening Investigation into Local Competition, D.P.U. 94-185, at 3 (January 6, 1995).

elements.⁸ The Act was enacted prior to completion of the Department's local competition investigation, so, at the time of passage of the Act, the Department shifted its focus to implementation of the federal requirements.

Since the passage of the Act, the Department has focused intensely on implementing the provisions of the Act and the FCC's local competition rules through the following investigations:

- Consolidated Arbitrations proceeding:⁹
 - **Phase 1–Non-cost issues (Phase 1 Order (1996)).**
 - **Phase 2– Resale Discounts**
Phase 2 Order (1996) (adopted avoided cost methodology); Phase 2-B Order (1997) (set interim resale discounts).
 - **Phase 3–Other non-cost issues, including Wholesale Performance Standards and Penalties**
Phase 3 Order (1996); Phase 3-B Order (1997); Phase 3-C Order (1997); Phase 3-D Order (1998); Phase 3-E Order (1998); Phase 3-F Order (1999); Phase 3-G Order (2000).
 - **Phase 4–TELRIC Rates, UNE-P, HARC, Dark Fiber**
Phase 4 Order (1996); (adopting TELRIC methodology for UNE rates); Phase 4-B Order (1997) (setting interim UNE rates, transport and termination charges); Phase 4-J Order (1999); Phase 4-P Order (2000) (establishing requirements for UNE-P); Phase 4-G Order (1998); Phase 4-H Order (1998), Phase 4-I Order (1999) (setting collocation rates); Phase 4-L Order (1999);

⁸ Id. at 3-4.

⁹ In 1996, the Department received the arbitration petitions of AT&T, MCI, Sprint, Teleport and Brooks Fiber. The petitions were consolidated into the docket D.P.U./D.T.E. 96/73-74, 96-75, 96-80/81, 96-83, 96-94. In late 1996, the Department began issuing its series of orders addressing the consolidated petitions.

Phase 4-O Order (2000); Phase 4-S Order (2000) (setting non-recurring charges, including OSS charges); Phase 4-Q Order (2000) (setting rates, terms and conditions for HARC); Phase 4-N Order (1999); Phase 4-R Order (2000) (setting dark fiber rates, terms and conditions).

- Department Approval of Interconnection Agreements.¹⁰
See MFS Intelenet, D.P.U. 96-72 (1996); Brooks Fiber, D.P.U. 97-90 (1997); ACC National Telecom, D.P.U. 97-85 (1997); AT&T, D.T.E. 98-35 (1998); MCI, D.T.E. 98-104 (1998), D.T.E. 96-83 (1998); Sprint, D.P.U. 96-94 (1997); Covad, D.T.E. 98-74 (1998), D.T.E. 98-21 (1998).
- MediaOne/Greater Media Arbitration, D.T.E. 99-42/43 (1999), D.T.E. 99-52 (1999) (addressing issues important to cable CLECs such as establishing points of interconnection, and standards and remedies for LNP).
- VZ-MA Interconnection Tariff No. 17, D.T.E. 98-57 (2000); D.T.E. 98-57-Phase I (2000) (determining collocation provisioning intervals, rates, transport costs, EELS), D.T.E. 98-57-Phase II (2000) (UNE-P/HARC tariff approval), D.T.E. 98-57-Phase III (2000) (setting rates, terms and conditions for line sharing).
- VZ-MA Resale Tariff No. 14, D.T.E. 98-15 Phase I (1998) (approving VZ-MA's resale tariff), D.T.E. 98-15 Phase II/III (1999) (adopting as permanent the interim resale discounts and UNE rates).
- AT&T Collocation Petition, D.T.E. 98-58 (1999) (establishing streamlined procedures for VZ-MA's collocation provisioning process).
- Enforcement Actions/Complaint Proceedings:
MCI WorldCom, D.T.E. 97-116 (1998); D.T.E. 97-116-A (1999); D.T.E. 97-116-B (1999); D.T.E. 97-116-C (1999); D.T.E. 97-116-D (2000); D.T.E. 97-116-E (2000) (discussing reciprocal compensation for ISP-bound traffic); NEVD, D.T.E. 99-87 (2000) (concerning access to VZ-MA conduits); RCN, D.T.E. 97-101 (1998) (finding voicemail not a required VZ-MA resale service); GNAPS, D.T.E. 98-116 (2000) (concerning provisioning of dark fiber across LATAs); Accelerated Docket Rulemaking, D.T.E. 00-39 (2000) (establishing expedited complaint procedures for inter-carrier disputes based on the FCC's "Rocket Docket").

¹⁰ In 1997, the Department streamlined the approval of negotiated agreements and no longer issues a written decision on such agreements.

III. PROCEDURAL HISTORY

On May 24, 1999, VZ-MA filed with the Department a copy of a preliminary application ("Compliance Filing") that VZ-MA intended to submit to the FCC for its consideration.¹¹ Under § 271 of the Act, VZ-MA must demonstrate to the FCC its compliance with a 14-point checklist of market-opening requirements.¹² The Act requires the FCC to consult with the Department to verify VZ-MA's compliance with the competitive checklist,¹³ and, in previous § 271 Orders, the FCC has emphasized the importance of state commission proceedings to develop a comprehensive factual record on a BOC's compliance with the checklist and the status of local competition prior to the BOC's filing with the FCC.¹⁴ The Department docketed VZ-MA's filing as D.T.E. 99-271 and, on June 29, 1999, issued a

¹¹ VZ-MA Application, Appdx. B, Vol. 1a-aa, Tab 2 (VZ-MA 271 Compliance Filing).

¹² 47 U.S.C. § 271 (c)(2)(B).

¹³ 47 U.S.C. § 271(d)(2)(B).

¹⁴ See e.g., Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, at ¶¶ 11, 51 (2000) ("SBC Texas Order"); Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, at ¶¶ 20, 51 (1999) ("Bell Atlantic New York Order").

Notice of Filing and Public Hearings on VZ-MA's Compliance Filing.¹⁵ From July 19 through August 5, 1999, the Department held five public hearings throughout the state¹⁶ and held its first procedural conference on July 22, 1999.

The participants in the Department's § 271 proceeding are as follows: United States Department of Justice ("DOJ"); Massachusetts Attorney General ("Attorney General" or "AG"); Representative Daniel E. Bosley, Co-Chairman, Massachusetts Joint Committee on Government Relations ("Rep. Bosley"); AT&T Communications of New England, Inc. ("AT&T"); Sprint Communications Company, L.P. ("Sprint"); AT&T Broadband ("AT&T Broadband"), formerly MediaOne Telecommunications ("MediaOne"); WorldCom, Inc. ("WorldCom"), formerly MCI WorldCom, Inc.; RCN-BecoCom, L.L.C. ("RCN"); Rhythms Links, Inc. ("Rhythms"), formerly ACI Corp.; New England Cable Television Association, Inc. ("NECTA"); Teligent, Inc. ("Teligent"); Level 3 Communications, L.L.C. ("Level 3"); Network Plus, Inc. ("Network Plus"); Choice One Communications of Massachusetts, Inc. ("Choice One"); Hyperion Communications of Massachusetts, Inc. ("Hyperion"); DSLNet Communications, L.L.C. ("DSLNet"); NorthPoint Communications, Inc. ("NorthPoint"); Global NAPS, Inc. ("Global NAPS" or "GNAPS"); Conversent Communications of Massachusetts, L.L.C. ("Conversent"), formerly NEVD of Massachusetts, Inc. ("NEVD");

¹⁵ VZ-MA Application, Appdx. B, Vol. 2, Tab 10 (D.T.E. Order to Publish Legal Notice).

¹⁶ The Department held public hearings in Pittsfield, Worcester, New Bedford, Newton, and Gloucester.

CTC Communications Corp. (“CTC”); Norfolk County Internet, Inc. (“Norfolk County Internet”); Association of Communications Enterprises (“ASCENT”), formerly the Telecommunications Resellers Association (“TRA”); Association for Local Telecommunications Services (“ALTS”); Cablevision Lightpath-MA, Inc. (“Cablevision”); CoreComm Massachusetts, Inc. (“CoreComm”); NECLEC, Inc. (“NECLEC”); Breakthrough Massachusetts (“Breakthrough”); The Competitive Telecommunications Association (“CompTel”); Covad Communications Company (“Covad”); Qwest Communications Corporation (“Qwest”); RNK, Inc. (“RNK”); SBC National, Inc. (“SBC”); TelEnergy, Inc. (“TelEnergy”); Intermedia Communications, Inc. (“Intermedia”); Nextlink New York, Inc. (“Nextlink”); Vits Networks (“Vits”); Focal Communications Corporation of Massachusetts (“Focal”); Z-Tel Communications, Inc. (“Z-Tel”); Digital Broadband Communications, Inc. (“Digital Broadband”); essential.com, inc. (“essential.com”); Winstar Communications, Inc. (“Winstar”); and Log On America, Inc. (“Log On America”).

On July 20, 1999, two motions were filed with the Department. First, AT&T filed a Motion to Suspend Further Proceedings Regarding the Section 271 Checklist Items.¹⁷ Second, a Joint Petition for a Massachusetts Roadmap to Establish Local Competition in the

¹⁷ In its Motion, AT&T asked the Department to: (1) suspend its consideration of any items set forth in the 14-point checklist that VZ-MA had not certified as complete and ready for consideration; (2) prohibit VZ-MA from supplementing the record at any time; (3) use AT&T’s Petition for Collaborative Process, docketed as D.T.E. 99-20, as a vehicle to resolve technical issues; and (4) commence operations support systems testing. See VZ-MA Application, Appdx. B, Vol. 3, Tab 55 (AT&T’s Motion to Suspend Further 271 Proceedings).

Commonwealth was filed by WorldCom, RCN, TRA, Sprint, RNK and TelEnergy (collectively, "Joint Petitioners").¹⁸

In a decision issued on August 19, 1999, the hearing officers granted in part and denied in part AT&T's Motion, and denied the Joint Petition.¹⁹ In addition, the hearing officers established an initial procedural schedule. The Joint Petitioners filed an appeal of the hearing officers' decision,²⁰ and, on September 30, 1999, the Department issued an interlocutory order affirming the hearing officers' decision with respect to the two motions as well as the procedural schedule.²¹

¹⁸ The Joint Petition requested that the Department require VZ-MA to file a baseline agreement that provides commitments to open the local market to competition as was done in Verizon New York's Pre-Filing Statement in New York's § 271 proceeding. See VZ-MA Application, Appdx. B, Vol. 3, Tab 58 (Joint Petition for a Massachusetts Roadmap to Establish Local Competition).

¹⁹ The hearing officers granted that portion of AT&T's Motion that asked the Department to suspend its final consideration of a checklist item until VZ-MA certifies the item as complete without further supplementation. VZ-MA Application, Appdx. B, Vol. 3, Tab 82 (Hearing Officers' Decision and Procedural Schedule).

²⁰ The Joint Petitioners appealed the following aspects of the August 19, 1999 Hearing Officers' Decision: (1) the denial of the request to order VZ-MA to provide the same commitments as were made in the New York road map; (2) the denial of AT&T's request to address the establishment of a collaborative process, which is the subject of another proceeding, in D.T.E. 99-271; and (3) the procedural schedule. VZ-MA Application, Appdx. B, Vol. 5, Tab 86 (Joint Petition for Appeal).

²¹ With regard to the road map, the Department stated that the determination of whether VZ-MA's filing meets the requirements of § 271 would be based upon the Department's review and analysis of the filing along with the record developed in this proceeding, and that VZ-MA's commitments made in another state may be useful to

(continued...)

On September 24, October 8, and October 29, 1999, the Department issued approximately 700 information requests to VZ-MA based upon the Compliance Filing. The first round of information requests²² consisted of competitive local exchange carrier ("CLEC") questions that had been solicited and reviewed by Department staff for relevance to the § 271 inquiry.²³ Consistent with our § 271 consultative role, the Department made the questions its own in order to develop a record to discharge that role. In November 1999, CLECs filed statements concerning issues to be discussed during the ensuing technical sessions.

From November 1 to November 23, 1999, the Department held twelve days of technical sessions in which VZ-MA witnesses were questioned by Department staff and CLECs. From December 2 through December 21, 1999, the Department held seven days of technical sessions with CLEC witnesses who were questioned by Department staff, VZ-MA,

²¹(...continued)

know but are not controlling. Next, the Department noted that it had not delegated to the hearing officers the authority to rule on the merits of other Department proceedings, and thus agreed with the hearing officers' decision not to rule in the instant proceeding on AT&T's request to establish a collaborative process, docketed in D.T.E. 99-20. Last, the Department upheld the procedural process set forth by the hearing officers on August 19, 1999, concluding that this process is designed to fulfill the Department's responsibility to develop, in an efficient manner, a comprehensive factual record of VZ-MA's compliance with the checklist and the status of local competition. See VZ-MA Application, Appdx. B, Vol. 6, Tab 118 (DTE Interlocutory Order on Joint Petitioners' Appeal of Hearing Officer Decision Dated 8/18/99).

²² Information requests are a form of pre-hearing discovery in Department practice, roughly analogous to Fed. R. Civ. Proc. 33.

²³ CLECs were provided an opportunity at a procedural conference to challenge Department staff's decision not to forward a particular information request to VZ-MA.

and CLECs.²⁴ During these technical sessions, over 300 record requests²⁵ were issued to both VZ-MA and to various CLECs.

On March 13, 2000, AT&T filed a Petition Requesting the Department To Review and Reduce the Recurring Charges for Unbundled Network Elements ("AT&T UNE Rate Petition").²⁶ In a Letter Order issued on July 27, 2000, the Department denied AT&T's UNE Rate Petition.²⁷

²⁴ The VZ-MA and CLEC technical sessions, held in November and December 1999 were transcribed; however, the witness testimony was not provided under oath. During the technical sessions held from August 14 through September 1, 2000, the Department administered oaths to the witnesses and required the witnesses to adopt their prior unsworn testimony and, where appropriate, the prior testimony of related subject-matter witnesses.

²⁵ Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness in the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. See 220 C.M.R. § 1.06(6)(h).

²⁶ AT&T argued that the UNE rates in existence at that time did not comport with the total element long run incremental cost ("TELRIC") methodology.

²⁷ Noting that most of the concerns expressed by AT&T related to charges for local switching, the Department based its denial on the fact that VZ-MA had negotiated and contracted for significantly lower local switching charges with one carrier which other carriers may avail themselves of through the "pick and choose" rule. In addition, the Department concluded that, because the Eighth Circuit vacated and remanded the FCC rules requiring the use of TELRIC to establish UNE rates and the resulting uncertainty of the FCC's pricing methodology on a going-forward basis, it would be inefficient to conduct an investigation using the vacated and remanded FCC pricing rule. See VZ-MA Application, Appdx. B, Vol. 40, Tab 481 (D.T.E. Letter Denying AT&T's Petition to Reduce UNE Rates).

On May 26, 2000, VZ-MA filed comments (“May Supplemental Filing”)²⁸ describing how, based upon its Compliance Filing and the record developed during this proceeding, it meets its statutory § 271 obligations and additional requirements set forth in the FCC’s Bell Atlantic New York Order.²⁹ On June 22, June 26 and June 28, 2000, the Department issued approximately 120 information requests to VZ-MA based upon its May Supplemental Filing. These information requests included CLEC questions that had been reviewed by Department staff for relevance.

CLECs and other participants filed written responses to VZ-MA’s May Supplemental Filing on July 18, 2000, and, on July 27, 2000, the Department issued approximately 40 information requests to various CLECs based upon their comments to the May Supplemental Filing. VZ-MA, in turn, filed responses to the CLEC comments in the form of Supplemental Affidavits on August 4, 2000.³⁰

From August 14 through September 1, 2000, the Department held six days of additional

²⁸ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423.

²⁹ At the time of the May Supplemental Filing, the FCC had approved only VZ-NY’s § 271 application.

³⁰ VZ-MA Application, Appdx. B, Vol. 42, Tab 494 (VZ-MA’s August Supplemental Checklist Aff.). For purposes of clarity, the Department will refer to the contents of VZ-MA’s May Supplemental Filing as “VZ-MA May Checklist Affidavit,” “VZ-MA May OSS Affidavit,” or “VZ-MA May Measurements Affidavit.” Similarly, we will refer to VZ-MA August 2000 filing as “VZ-MA August Supplemental Checklist Affidavit,” “VZ-MA August Supplemental OSS Affidavit,” and “VZ-MA Supplemental Measurements Affidavit.”

technical sessions to clarify the record with respect to factual disputes raised by the applicant and various participants. During these technical sessions, 30 record requests were issued to both VZ-MA and various CLECs. In addition, the Department held a panel hearing on September 8, 2000, where the applicant and CLECs presented oral argument to the Department on VZ-MA's compliance with the 14-point checklist contained in § 271.³¹

In March 2000, the Department directed VZ-MA and other participants to file proposed

³¹ At the outset of the Oral Argument, the Department requested that each speaker answer the following question: “[c]iting the specific numbered item of the 271 14-point checklist, which, if any, of the checklist items the speaker . . . believes is satisfied in Massachusetts and which, if any, of the checklist items is not satisfied.” VZ-MA Application, Appdx. B, Vol. 49, Tab 565, at 5415-5416 (Transcript of Oral Argument Held 9/8/00). The first speaker, VZ-MA, stated that VZ-MA has “absolutely met every checklist item.” Id. at 5418. AT&T, stated that, in its view, checklist items 1, 2, 3, 4, and 11 have not been satisfied by VZ-MA. Id. at 5436. Chairman Connelly, reminding AT&T that his question was a compound one, asked AT&T whether there was a “negative pregnant in your remark, that the [other checklist items] have been met?” Id. AT&T replied, “There is with respect to the other nine checklist items.” Id. Covad indicated that VZ-MA has not satisfied checklist items 2, 4 and 5. Id. at 5494. Digital Broadband stated that VZ-MA has not satisfied checklist items 2 and 4. Id. at 5511. AT&T Broadband stated that VZ-MA has not satisfied checklist items 1, 2, 3, 5, and 11. Id. at 5523. NECTA stated that VZ-MA has not satisfied checklist items 1, 2, 3, 5, and 11. Id. at 5532. ASCENT stated that VZ-MA has not satisfied checklist items 2 and 14. Id. at 5553. RCN stated that VZ-MA has not satisfied checklist item 3. Id., at 5559. Rhythms stated that VZ-MA had not satisfied checklist item 2 and 4. Id. at 5571. Sprint stated that VZ-MA had not met checklist items 1, 2, 3, 4, and 11. Id. at 5583. MCI stated that VZ-MA had not met checklist items 1, 2, and 4. Id. at 5596. Finally, Z-Tel stated that checklist item 2 “is the only one that there’s any question on, and it’s the issues that we’ve raised in this proceeding, loss-of-line report and cut-through.” Id. at 5612. Z-Tel added that “[w]e’re working with Verizon, and we’re confident that we can resolve the issues; but until we have come to closure on those issues, I just don’t want to take a position. But all the other issues, as far as we’re concerned, have been met.” Id. at 5612.

performance assurance plans ("PAPs"). VZ-MA, AT&T, and WorldCom each filed proposed PAPs. On September 5, 2000, the Department approved VZ-MA's PAP, with modifications.³² On September 15, 2000, VZ-MA filed a revised PAP in compliance with Department directives; the Department stamp-approved VZ-MA's revised PAP on September 21, 2000.

In August 1999, the Department contracted with KPMG Consulting, L.L.C. ("KPMG") and VZ-MA to conduct a test of VZ-MA's operations support systems ("OSS"). KPMG submitted a draft Master Test Plan ("MTP") in early September 1999; CLEC comments on the draft MTP were received on October 15, 1999. The Department approved the Final MTP on November 19, 1999. In January 2000, the Department issued a Letter Order ("Attachment A") adopting the performance metrics developed in the New York Carrier-to-Carrier ("C2C" or "C2C Guidelines") proceeding as the metrics to be used by KPMG in evaluating VZ-MA's performance and to be replicated by KPMG. On February 1, 2000, KPMG proposed a scope change to reduce the period of time for volume testing. After receiving comments from the CLECs and VZ-MA on the proposed scope change, the Department approved KPMG's proposal on February 16, 2000.

On March 23, 2000, AT&T proposed a scope change to conduct a Local Service Operating Guidelines, version 4 ("LSOG-4") volume test. After receiving comments, the Department denied this proposal on May 12, 2000. KPMG submitted the first draft of its final

³² VZ-MA Application, Appdx. B, Vol. 47, Tab 559 (D.T.E.'s Order Adopting VZ-MA's PAP).

report (Version 1.0) to the Department and VZ-MA on July 17, 2000. A revised draft (Version 1.1) was submitted to all participants on July 26, 2000. CLEC comments on the revised draft were received on August 3, 2000. On August 9, 2000, a second revised draft (Version 1.3) was submitted to all participants. The Department held technical sessions on Version 1.3 of the KPMG report on August 28 and August 29, 2000. On September 7, 2000, KPMG released its Final Report (Version 1.4).

On September 22, 2000, VZ-MA filed its § 271 application with the FCC.

IV. VZ-MA COMPLIANCE WITH § 271(C)(1)(A) – PRESENCE OF FACILITIES-BASED COMPETITION

A. Background

In order for the FCC to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either § 271(c)(1)(A) ("Track A") or § 271(c)(1)(B) ("Track B").³³ To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."³⁴ The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange facilities or in combination with the resale of the telecommunications services of

³³ 47 U.S.C. § 271(d)(3)(A).

³⁴ 47 U.S.C. § 271(c)(1)(A).